

4:53 pm Sep 24, 2024

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT *W.S.*

IN THE MATTER OF:

SFWMD ORDER NO. 2024-066-DAO

EMERGENCY AUTHORIZATION FOR
PUMPING AND OTHER MEASURES
TO ADDRESS FLOODING CAUSED
BY POTENTIAL TROPICAL CYCLONE NINE

/

EMERGENCY FINAL ORDER

Under the authority of the State of Florida Executive Orders No. 24-208 and 24-209, and section 120.569(2)(n), Florida Statutes, the South Florida Water Management District ("District"), enters this Order authorizing pumping and other emergency measures to address impacts associated Potential Tropical Cyclone Nine ("the Storm").

FINDINGS OF FACT

1. Governor DeSantis issued Executive Orders 24-208 and 24-209 ("the Executive Orders") on September 23 and 24, 2024, respectively, declaring a state of emergency based upon the serious threat to the public health, safety, and welfare posed by the Storm. The Governor included the following counties in the Executive Orders that are within the District's jurisdiction Charlotte, Collier, Glades, Hendry, Highlands, Lee, Monroe, Okeechobee, Orange, Osceola, and Polk counties ("the Emergency Areas").

2. The Storm has the potential to cause widespread wind damage and flooding and poses an immediate danger to the lives and property of persons throughout the Emergency Areas.

3. In the Executive Orders, the Governor found that the special duties and responsibilities of some agencies, including the District, in responding to disasters may

require them to deviate from the statutes and rules they administer. Moreover, the Executive Orders permit agencies, including the District, to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders or rules of the agency, if strict compliance with the provisions of any such statute, order, or rule would, in any way prevent, hinder, or delay necessary action in coping with the Storm and its effects.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

4. The District issues this Order to carry out the directives in the Executive Orders. Additionally, the District has authority to issue this Order under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes.

5. The District finds that the actions authorized under this Order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

6. Based on the above findings of fact, and in order to protect the public's immediate health, safety, and welfare, and to not prevent, hinder, or delay necessary action in coping with the Storm and its effects, it is both reasonable and appropriate to suspend the statutes and rules described herein.

ORDER

THEREFORE, IT IS ORDERED that the following activities may be undertaken to address emergency flooding situations resulting from the Storm that require immediate action, subject to the limitations in this Order:

1. *On-Site Discharges – No Notice Required*

Internal movement of water from flooded areas within a project site to other areas within the same project site shall be allowed in the Emergency Areas during the course

of this Order. No notice to the District is required. Examples of activities authorized by this paragraph include moving water from internal roadways, parking lots, swales, or other on-site areas to on-site surface water management ponds or lakes, or other areas on-site that would not directly discharge off-site. This Order does not authorize pumping or discharging of flood waters to off-site property, canals, or water bodies not completely on-site other than through permitted facilities, subject to permit requirement.

2. Off-Site Discharges – Field Authorization Required

Moving water from flooded project areas to areas off-site may be temporarily allowed only if approved by the District after a field inspection. Field authorizations shall be granted only if:

a. The off-site discharge is necessary to relieve flooding resulting from the Storm that poses an immediate threat to public health, safety, or welfare. Minor inconvenience flooding, such as standing water in roads, swales or yards, is not considered an immediate threat.

b. Field authorizations may be requested by providing a notice to the local office of the District containing a description of the discharge requested, the facilities and the water stages, the rate of discharge and the discharge location of the flooded areas and receiving body, the location of the discharge, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the discharge. District staff may also issue field authorizations without prior notice. District staff shall create and maintain written records of all field authorizations.

3. Operational Changes by Local Governments or 298 Districts – Notice Required

Water Control Districts authorized under Chapter 298 of the Florida Statutes and local governments may, during the course of this Order, discharge water on-site or off-site in excess of District-permitted operational schedules to prepare for the impacts of the Storm and to mitigate flooding impacts resulting from the Storm if:

a. Notice is provided to the District's Emergency Operations Center. The notice shall:

(1) identify a responsive and responsible representative of the water control district or local government, including title and emergency contact information; and

(2) describe the facilities and the water stages, rate of discharge, and the discharge location of the flooded areas and receiving body.

b. Authorization for the excess discharges is granted, either orally or in writing, by District staff assigned by the District's Emergency Operations Center to this function.

Local governments or 298 districts operating under the emergency provisions of this Order shall immediately cease the excess discharge upon notification by the District to do so.

4. General Conditions

All activities authorized under paragraphs 1, 2, and 3 shall be conducted in accordance with the following conditions and requirements:

a. All activities shall be performed in a manner which minimizes adverse water quality and water quantity impacts. This includes properly installed and maintained erosion and turbidity control devices to prevent erosion and shoaling and to control turbidity, nutrient loading, and sedimentation in off-site receiving waters.

b. Entities operating under this Order shall immediately correct any erosion, shoaling, or water quality problems that result from the activities authorized under this Order.

c. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

d. This Order serves as relief for the duration of the Order from the specified regulatory requirements of the District only, and does not provide relief from the requirements of other federal, state, water management districts, or local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor does it negate the need to comply with all the requirements of those permits.

5. *General Limitations*

The District issues this Order solely to address the emergency created by the Storm. This Order shall not be construed to authorize any activity within the jurisdiction of the District except in accordance with the express terms of this Order.

6. *Suspension of Statutes and Rules*

The following provisions of statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

a. All requirements for permits, leases, consent of uses or other authorizations, including, but not limited to, provisions in chapters 120, 161, 253, 258, 373, 376 and 403, Florida Statutes, and Rules adopted thereunder; and

b. All notice requirements, including, but not limited to, provisions in chapters 120, 161, 253, and 373, Florida Statutes, and chapters 18-18, 18-20, 18-21, 40E-0, 40E-1, 40E-6, and 62-330, Florida Administrative Code.

7. *Expiration Date*

This Order shall take effect immediately upon execution by the Executive Director of the District, and shall expire on November 22, 2024, unless otherwise extended or terminated by the Executive Director or Governing Board.

8. *Violation of Conditions of Emergency Final Order*

Failure to comply with any condition set forth in this Order shall constitute a violation of chapters 120, 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or other judicial forum.

DONE AND ORDERED on this 24th day of September 2024, in West Palm Beach, Florida.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT



Drew Bartlett
Executive Director

NOTICE OF RIGHTS

Any party substantially affected by this Order has the right to seek judicial review under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the District at 3301 Gun Club Road, West Palm Beach, Florida 33406, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal.

The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the District.

